HE HONOUABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.17888 of 1995

Between:

K.Gopala Krishna Murthy. **.. PETITIONER**

AND

The General Manager, The new India Assurance Company Limited and others.

.. RESPONDENTS

-

-

ORDER:

Proceedings of the second respondent, dated 26-07-1994, whereby the petitioner was imposed punishment of reduction in basic pay by two stages permanently i.e., from Rs.3040/- to Rs.2800/- with immediate effect and the order of the first respondent, dated 26-04-1995, whereby the appeal preferred by the petitioner was rejected and the order of the disciplinary authority was confirmed, is impugned in this writ petition.

Facts, to the extent necessary, are that the petitioner was working as a Development Officer in the respondents company at its Guntur branch. The petitioner issued cover note No.233067 dated 07-05-1990 in favour of one Mr.G.Rajendra Prasad towards renewal of policy No.11/1264. The cover note, on identical terms of the previous year's policy, covered only building and equipment of the poultry shed valued at Rs.15,000/-. The premium payable was a paltry amount of Rs.20/-. The petitioner issued another cover note No.233068 in favour of Mr.V.Janaiah, which was also a renewal of the previous year's policy No.11/1263 and the premium amount involved was for a sum of Rs.62/- only. It is the case of the petitioner that the cover notes were issued in the usual course of business on 08-05-1990 and the premium amounts collected by him, that he was informed that the concerned collection cashier had left office with permission and was not available. The petitioner would contend that on 09-05-1990 also the cashier was on leave and no alternative arrangements were made by the branch to receive the premium, that when the petitioner offered the premium amounts to the Branch Manager, he

requested the petitioner to keep the amount with him and remit the same on the next date, as the amount was small. Petitioner would contend that he did not suspect or anticipate anything amiss, as in the normal course of business, the collecting cashier used to accept premiums from Development Officers only on the days on which he intended to remit the premium amounts received into the Bank and in this process collections used to be held up with the Development Officer for a day or two. According to the petitioner, the office remained closed due to heavy rains on 10-05-1980 and the petitioner remitted the premium amounts on 11-05-1990. Petitioner would contend that pursuant to the claim made by the insurers, the company had made enquiry with regards suspicious transactions involving heavy amounts and Wing Commander P.A.Mohan Rao was entrusted the task of investigating into 19 cover notes and corresponding claims including the cover notes of Mr.G.Rajendra Prasad and Mr.V.Janaiah. According to the petitioner, in the report submitted by Wing Commander Rao on 01.07.1990 and 15.11.1990, it was held that the cover notes issued in favour of Sri G.Rajendra Prasad and Sri V.Janaiah were true, that there were no indication of any fraud and as such were recommended for immediate settlement. It is stated that when the company failed to settle the claims of the insured, the claimants approached the Consumers' Forum and obtained orders for payment. It is only thereafter that the 2nd respondent describing himself as the Competent Authority had issued a charge-sheet against the petitioner on 17-01-1992. The petitioner submitted his explanation on 17-02-1992. An enquiry officer was appointed by the 2nd respondent and a domestic enquiry was conducted. The Enquiry Officer submitted his report, based on which, the 2nd respondent passed the order dated 26-07-1994 and on the petitioner preferring an appeal against the said order, the first respondent confirmed the order of the 2nd respondent in his order dated 20-04-1995.

In the counter affidavit, it is stated that a charge-sheet was issued to the

petitioner on 17-01-1992 levelling the following charges:-

> "1. Issued Cover Note No.233067 in favour of Mr.Goli Rajendra Prasad for the period 07-05-1990 to 06-05-1991 for a sum insured of Rs.20,000/- when there was break in insurance, in collusion with the insured and antedating the same.
>
> 2. Issued cover Note No.233067 in favour of Goli Rajendra Prasad on 07-05-1990 with full knowledge of cyclone warning which is known to every one through Media like Newspaper, Radio, TV with a view to favour the insured and cause the financial loss to the company.
>
> 3. Mr.K.G.K.Murthy collected premium of Rs.20/- in cash in respect of the said cover note and failed to deposit the same on the same day or on the next day and deposited actually on 11-5-1990 vide receipt No.153976 against the Rules of the Company.
>
> 4. Issued cover Note No.233068 in favour of Mr.V.Janaiah for the period 08-05-1990 for a sum insured of Rs.65,000/- after break in insurance in collusion with the insured and antedating the same.
>
> 5. Issued cover Note No.233068 on 08-05-1990 with full knowledge of cyclone warning which is known to every one through Media like Newspaper, Radio and TV with a view to favour the Insured and cause financial loss to the Company.
>
> 6. Mr.K.G.K.Murthy collected premium of Rs.62/- in cash on 08-05-1990 in respect of Cover Note No.233068 but deposited the premium amount in branch only on 11-05-1990 against the rules of the Company. Mr.K.G.K.Murthy has exhibited lack of integrity, lack of devotion to duty and failed to observe comply with and obey the rules of the company and acted in a manner prejudicial to the interest of the violation of clauses (i) (ii) of sub Rule (i) of Rule 3 and sub rules (1) and (5) of Rule 4 of General Insurance CDA Rules, 1975."

It is stated that before the Enquiry Officer, the petitioner took the assistance of a co-employee and fully participated in the enquiry proceedings, that the management examined two witnesses and filed several documents in support of the charges, and

that the petitioner examined one witness but did not depose in the enquiry. It is stated that written arguments were filed before the enquiry officer, both on behalf of the management as well as the petitioner, and that the Enquiry Officer, after a thorough examination of the entire material placed before him and after an elaborate discussion, had come to the conclusion that all the charges levelled against the petitioner had been proved. It is stated that a show-cause notice was issued to the petitioner on

25-01-1994 and, on the petitioner submitting his explanation thereto on 16-05-1994, the Disciplinary Authority found the petitioner guilty of mis-conduct and taking a lenient view, imposed the punishment of reduction in pay scale by two stages on the petitioner. It is stated that the petitioner had issued two cover notes though he was aware that there was already a cyclone in the Guntur District, and that the cover notes were issued antedating the same, during the cyclone period. It is stated that the Divisional Office had issued a circular dated 08-05-1990 directing the staff not to do any business on account of the Cyclone and that it has been the consistent practice that once cyclone begins, till it ends no business should be canvassed. It is stated that the petitioner did not even get the cover notes endorsed by the Branch Manager on 07-05-1990 and 08-05-1990 and that the close proximity between the alleged date of issuing the cover notes and the date of accident itself go to show the ill-intention and motive of the petitioner and clearly leads to an irresistible conclusion of the petitioner antedating the cover notes for the benefit of the policy holders resulting in the company being forced to pay amounts to the policy holders on account of the mis-conduct of the petitioner. It is stated that though it was a fit case to impose severe punishment on the petitioner, a lenient view was taken, that the Regional Manager is the Competent Authority as per the Rules and even though the C.D.A. Rules had designated the Deputy Manager of the division as the Competent Authority, the Regional Manager who is superior in rank to the Deputy Manager was always competent to act as the disciplinary authority. It is stated that no prejudice in

this regard was caused to the petitioner nor had he lost the right of appeal and that this contention had not been raised in the grounds of appeal filed by the petitioner. It is stated that this contention was not even raised by the petitioner in his explanation to the show-cause notice. It is stated that if indeed the petitioner had issued cover notes on

07-05-1990 and 08-05-1990 itself, there was no reason for him not to get them endorsed on the same day by the Branch Manager or the A.A.O. and in not remitting the premium amounts on the same day by paying it to the Branch Manager or the A.A.O. even if cashier was absent.

Sri P.V.R.Sharma, learned counsel for the petitioner, would raise the following grounds:

(1) The disciplinary authority has not specifically adverted to the admission of MW.1 and MW.2 and DW.1 and since the order of punishment was imposed without considering the material on record, the entire order is vitiated.

(2) The report of the Wing Commander, wherein, the cover notes issued by the petitioner were held to be genuine was not considered nor it was dealt with in the order of the appellate authority.

(3) The findings of the Enquiry Officer, ignoring relevant material are perverse and are based on no evidence.

(4) The circular instructions dated 08-05-1990 are not applicable.

(5) Punishment imposed is grossly disproportionate to the charges held proved.

In so far as the first contention is concerned, the Enquiry Officer, in his report, specifically referred to the evidence of Mr.Harinadha Babu (MW.1) and noted that he had stated that even in the absence of the collecting cashier on 09-05-1990, premiums were received in the branch from other Development Officers. The Enquiry Officer also recorded the statement of MW.1 that he did not remember whether the petitioner had approached him or not on 09-05-1990 to deposit the premium. The Enquiry Officer held that since premiums from other Development Officers were collected in the branch on 09-05-1990, had the petitioner really approached on 08-05-1990 or on 09-05-1990, he could very well have deposited the premium. The Enquiry Officer also not took of the evidence of MW.1 that there was a cyclone on 09-05-1990 as a result of which the office was closed on 10-05-1990. The Enquiry Officer held that the petitioner had not issued the cover note No.233067 to G.Rajendra Prasad till 09-05-1990 and had it issued thereafter, when the cyclone had already affected the Guntur area. The Enquiry Officer also took note of the evidence of T.Balakrishna (DW.1), the then Branch Manager, who had stated that he had received a circular dated 08-05-1990 from his Development Officer at 2 p.m. and had advised on the same day not to accept stocks for insurance against cyclone on 08-05-1990 and 09-05-1990 and that he had conveyed the contents of the circular to all the Development Officers. The Enquiry Officer held that though the petitioner had collected the premium on 08-05-1990, he had failed to deposit the amount collected either on the same day or on the next day and that the charges levelled against him were proved. The Disciplinary Authority, in his order dated 26.07.1994, carefully examined the material available on record, considered the facts and circumstances of the case, the enquiry report and on going through the reply submitted by the petitioner to the second show-cause notice and upon holding that no new facts were pointed out by the petitioner other than those he had already raised in the enquiry proceedings, he fully agreed with the conclusions of the Enquiry Officer. Having regard to the fact that the charges levelled against the petitioner were serious in

nature, which displayed absolute lack of integrity and devotion to duty, and taking a lenient view of the matter and considering the attendant circumstances, the disciplinary authority held that ends of justice would be met by imposing a penalty of reduction in basic pay by two stages permanently.

It is well settled that in cases where the Disciplinary Authority concurs with the findings of the Enquiry Officer, it is not necessary for him to repeat the conclusions of the Enquiry Officer in its entirety or to reiterate the very same findings as given by the Enquiry Officer. While reasons are required to be assigned by the Disciplinary Authority, such reasons need not be elaborate, more so, where the Disciplinary Authority concurs with the findings of the Enquiry Officer. In the present case, the Enquiry Officer has adverted to the evidence of MW.1, MW.2 and the defence witness before recording his findings with respect to each charge. Since evidence of these witnesses were considered by the Enquiry Officer and since the Disciplinary authority concurred with the findings of the Enquiry Officer, it was not necessary for him to advert specifically to each and every aspect of the evidence of these witnesses. The first contention is therefore rejected.

With regards the second contention relating to the Wing Commanders report. It is not even the case of the petitioner that the said report was marked as an exhibit in the enquiry proceedings. The Enquiry Officer is required to consider only the evidence adduced in the enquiry, both oral and documentary, and since the Wing Commander's report does not form part of the evidence on record, failure to take into consideration the said report is of no consequence. It is well settled that a preliminary enquiry report which has not been made part of the evidence in the domestic enquiry ought not to be considered or relied upon by the Enquiry Officer in arriving at his findings. In any event, the Wing Commander's report merely states

that in issuing the cover notes there was no intention of fraud. The Wing Commander recommended for settlement of claims. The charges levelled against the petitioner include his having collected premium in cash in respect of the cover notes and to have failed to deposit the same on the same day or the next day. These charges do not have any relation whatsoever with the Wing Commander's report. It is well settled, by a catena of judgments of the Supreme Court, that even if this courts were of the view that a few of the several charges, levelled against the delinquent employee, are proved, no interference would still be called for.

In **State of Orissa v. Bidyabhushan Mohapatra,** the Supreme Court held thus:

> "The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were "unassailable" the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanor for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction of the findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanor, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

In **Railway Board, New Delhi v. Niranjan Singh,** the Supreme Court held thus:

> "Before we take up for consideration Point No. 2 formulated above, it would be convenient to deal with Point No. 3. It was not disputed before us that the first charge levelled against the respondent is a serious charge and it would have been appropriate for the General Manager to remove the respondent from service on the basis of his finding on that charge. But we were told that we cannot assume that the General Manager would have inflicted that punishment solely on the basis of that charge and consequently we cannot sustain the punishment imposed if we hold that one of the two charges on the basis of which it was imposed is unsustainable. This contention cannot be accepted in view of the decision of this Court in State of Orissa v. Bidyabhushan Mohapatra, (1963)Suppl. (1) SCR 648=(AIR 1963 SC 779) wherein it was held that if the order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which the punishment imposed can lawfully be imposed it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment question."

Failure to take into consideration the Wing Commander's report is, therefore, of no consequence. Similarly, the circular instructions dated 08-05-1990 and it applicability has no connection with the charge levelled against the petitioner regarding his failure to deposit the premium amounts, collected by him, within time. Petitioner's contention that the circular instructions dated 08.05.1990 was only to cover stocks against flood and cyclone risk and did not include Lands and Buildings, has come out in the evidence adduced in the enquiry and the enquiry officer held that since it was the consistent practice not to cover risks during cyclone period as this area was prone to cyclone, the petitioner ought not to have renewed the policy. In any event, the interpretation placed by the petitioner on the circular dated 08-05-1990 has no connection with his belated deposit of the premium amount collected by him.

The last contention regard disproportionate punishment must also fail. The charges leveled against the petitioner are serious in nature. It is not as if the petitioner has been imposed the punishment of termination from service. The punishment of reduction in the basic pay by two stages permanently cannot be said to be a punishment, which, in the light of the charges held proved, shocks the conscience of this court or is a punishment which could not have been imposed at all. It is also well settled that even if this court is of the view that some of the several charges levelled against the petitioner are held not to be proved and if the punishment imposed by the disciplinary authority could have been imposed in respect of the other charges held proved, no interference is called for from this court in proceedings under Article 226 of the Constitution of India.

The writ petition as filed fails and is accordingly dismissed. There shall however be no order as to costs.

_____

23-02-2006

Prv